THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :24728 OF 1995

DATED:19-09-2007

BETWEEN:

Middinti Sambasivudu @ Sambaiah & 6 others.

..... PETITIONERS

AND

The Joint Collector,
Rangareddy District,
Khairatabad,
Hyderabad & 3 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner; learned Government Pleader for Revenue; and the learned counsel appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the order of the Joint Collector in Case No.B1/601/95, dated 30-09-1995, as null and void, unconstitutional, and further declare the ROR proceedings in Case No.B1/601/95 as maintainable while setting aside the order of the Mandal Revenue Officer in Case No.D2/2452/92, dated 19-07-1993.

3. After the death of the 5th petitioner his legal heirs were brought on record as petitioners 8 to 19. It is the case of the petitioners that the agricultural lands bearing Nos.371, 372, 379, 381, 382, 403, 404, 405, 406, 407, 408,414, 415, 416 and 417 total admeasuring Ac.66.16 guntas situated at Maheswaram village and mandal are the ancestral properties of the great great grand father of the petitioners 2 to 7 of which 1st petitioner is recorded as a protected tenant having succeeded the lands standing in the name of one Kurma Jangaiah. Petitioners are in possession of the said land and the respondents 3 and 4 under the forged agreement of sale filed a petition for grant of pattadar pass books and title deeds under Section 5(A) of the A.P. Record of Rights in Land and Pattedar Passbooks Act, 1989 (for brevity, 'the Act') for validation of the

agreement of sale, dated 12-10-1982, in respect of the lands of Ac.5.00 in Sy.No.379 (6.02), 381 (5.00), 382 (4.35) total admeasuring 15.22 guntas situated at Maheswaram village and mandal, Rangareddy District. The Mandal Revenue Officer, Maheswaram mandal by order, dated 19-07-1993, in proceedings No.D/2/2452/92 validated the agreement of sale under Section 5A of the Act. Aggrieved by the said order, petitioners herein filed revision under Section 97 of the Act before the Joint Collector, Rangareddy District, but the revision has been dismissed on the ground that the protected tenants have not produced the succession certificate. It is stated that the Joint Collector has not considered any of the contentions raised by the appellants with regard to the right of the pattadars and other protected tenants and erroneously dismissed the revision by order, dated 30-09-1995, in proceedings No.B1/601/85.

4. Learned counsel appearing for the respondents 3 and 4 submits that the total extent of the land i.e., Ac.66.16 guntas, is the ancestral property of the petitioners, but mutation of the said land was effected in the name of nine persons who are the successors after making an enquiry and the said land is not in possession of the petitioners and the agreement of sale has been rightly validated by the Mandal Revenue Officer.

5. I am not inclined to express any opinion with regard to the right, title, entitlement of the respective parties but the question that arises for consideration in this Writ Petition is whether the agreement of sale can be validated by the Mandal Revenue Officer under Section 5-A of the Act or not.

6. Under Section 5-A of the Act the Mandal Revenue Officer

is entitled to validate the alienation/transfer made or effected by any instrument other than by registered document, but whereas in the instant case there is no simple sale deed or deed of transfer, but there is only an agreement of sale. It is stated that the controversy is authoritatively decided by the Division Bench in ***KONKANA RAVINDER GOUD AND OTHERS v. BHAVANARISHI CO-OPERATIVE HOUSE BUILDING SOCIETY, HYDERABAD AND OTHERS***[1]***.*** It is appropriate to extract paragraph No.67 which reads as follows:

> "In the instant case, we are concerned with the purport and meaning of the word "transfer" as contained in Section 5-A of the Act in the light of the objects and reasons in introducing the said provision, namely, to regularize an unregistered sale transaction, which would not mean to regularize incomplete transfer. There is no machinery or mechanism provided in the Act that even a person who has entered into an agreement of sale and in case is not completed but he has been put into possession of the property even on payment of entire sale consideration that can approach the Mandal Revenue Officer for grant of a certificate under Section 5-A of the Act. The Mandal Revenue Officer in such a case cannot proceed to hold an enquiry as to whether agreement of sale has been complied with or not. On the failure on the part of vendor to complete the sale transaction, a person in whose favour there is an agreement of sale can seek specific performance of the agreement of sale so as to convey right, title or interest of the vendors. The machinery provided under the Act is not the appropriate machinery for perfecting title merely on the basis of agreement to sell. We are, therefore, of the view that the finding of the learned Judge that there is a valid transfer of immovable property under agreements of sale cannot be sustained".

Thus I am of the opinion that the agreement of sale cannot be validated by the Mandal Revenue Officer.

7. Accordingly, the order of the Mandal Revenue Officer, so also the revisional order of the Joint Collector, are set aside and the Writ Petition is allowed with costs, keeping it open to resolve their claims in accordance with law.

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V.ESWARAIAH,J

19th September, 2007.
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[1] 2003(6)ALT 1 (D.B.)